IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

OP.No. 10428 of 2001(N)

PETITIONER:

STATE BANK OF INDIA,
OVERSEAS BRANCH,
WILLINGTON ISLAND,
COCHIN-3, REP. BY ITS
MANAGER (ACCOUNTS).

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY ITS CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.

2. ASSISTANT COMMISSIONER(ASSESSMENT)
COMMERCIAL TAXES,
SPECIAL CIRCLE, MATTANCHERI.

3. SALES TAX APPELLATE TRIBUNAL,
TRIVANDRUM.

4. DEPUTY TAHSILDAR(R.R.)
TALUK OFFICE, KOCHI.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON 22/02/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.16728/2001 IN O.P. NO.10428/2001

DISMISSED:

22.2.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE AFORESAID DEMAND NOTICE DT.21.3.2001 ISSUED BY R4.

P2: TRUE COPY OF REFERENCE ORDER OF THIS HON'BLE COURT IN O.P. NOS.12692 & 12911/1992.

P3: TRUE COPY OF ASSESSMENT ORDER DT.31.7.92 ISSUED BY R2.

P4: TRUE COPY OF ORDER DT.21.10.97 PASSED BY DEPUTY COMMISSIONER (APPEALS) AIT & ST ERNAKULAM.

P5: TRUE COPY OF THE APPEAL 1083/97 BEFORE R3.DO

P6: TRUE COPY OF FINAL ASSESSMENT ORDER DT.15.1.1998.

P7: TRUE COPY OF THE ASSESSMENT ORDER DT.31.1.93 WRONGLY DT. AS 31.3.92.

P8: TRUE COPY OF THE ORDER DT.16.3.99.

P9: TRUE COPY OF APPEAL BEFORE R3.DO

P10: TRUE COPY OF ARREAR NOTICE DT.27.2.2001 ISSUED BY R2.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.10428 of 2001

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Dated this the 22nd day of February, 2007.

JUDGMENT

The question raised is whether petitioner is liable to pay tax at sale point on bullion sold to jewellers or whether jewellers are liable to pay tax under Section 5A of the KGST Act, if petitioner is granted exemption. Counsel for the petitioner contended that even though delivery was given earlier, sale was finalised later. It is very surprising that after delivery of goods with right to appropriation given to purchasers, the petitioner contends that sale has not taken effect. In any case since sale is between two dealers, there can be no escapement of sales tax because the scheme of the Act provides for tax either at sale point or at purchase point as the commodity is not entitled to exemption. Section 5A is provided only to take care of a situation when the selling dealer is entitled to exemption, but the commodity is not. So much so, if petitioner's claim for exemption is sustained, necessarily purchasers will be liable to tax under Section 5A. There is no need for this court to consider validity of assessment and it is for the petitioner to pursue the matter before appellate authorities. The O.P. is

disposed of directing the appellate authority take into account the position of law explained above while disposing of the appeal.

C.N.RAMACHANDRAN NAIR
Judge

pms